



LAW OFFICES OF
TEXAS RIO GRANDE LEGAL AID, INC.
1111 North Main St.
SAN ANTONIO, TEXAS 78212

Telephone (210) 212-3700

FAX (210) 212-3772

September 14, 2009

Judge Sarah Ramos
State Office of Administrative Hearings
Austin Office
300 West 15th Street, Suite 502
Austin, Texas 78701

VIA FAX NO. (512) 475-4994
AND REGULAR MAIL

Re: Aspen Power, LLC Application for Air Quality Permit Nos 81706, PSD-TX 1089, HAP 12,
SOAH DOCKET NO. 582-09-0636, TCEQ DOCKET NO. 2008-1145-AIR.

Subject: ANNIE MAE SHELTON AND ALIGNED PROTESTANTS' RESPONSE TO
PROPOSAL FOR DECISION

Dear Judge Ramos:

Enclosed please find Protestant Annie Mae Shelton and Aligned Protestants' Response
To Proposal For Decision.

Sincerely,

Enrique Valdivia
Attorney at Law

CC: TCEQ Chief Clerk w/ enclosure original and seven copies
via fax no. 512-239-3311 AND REGULAR MAIL

Service list

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 SEP 14 PM 4:26
CHIEF CLERKS OFFICE

SOAH DOCKET NO. 582-09-0636

TCEQ DOCKET NO. 2008-1145-AIR

§
§
APPLICATIONS OF ASPEN POWER, L.L.C.
§
FOR TCEQ AIR QUALITY PERMIT NO.
§
81706, PREVENTION OF SIGNIFICANT
§
DETERIORATION AIR QUALITY PERMIT
§
PSD-TX-1089, AND HAP 12
§
BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

CHIEF CLERKS OFFICE

2009 SEP 14 PM 4:26

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

ANNIE MAE SHELTON AND ALIGNED PROTESTANTS'

Response to Proposal For Decision

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Annie Mae Shelton and Aligned Protestants hereby file the following proposed Findings of Fact.

Introduction

Protestants are in general agreement with the Proposal for Decision in this case and are appreciative of the Hon. Administrative Law Judge's findings and conclusions. Protestants responses are limited to three areas wherein Protestants submit new information or seek clarification, Startup/Shutdown/Maintenance (SSM), the definition of Best Available Control Technology (BACT), and Pollutant Emission Limits.

Startup, Shutdown, Maintenance

In setting MACT standards, the Clean Air Act specifies that work practice standards may be used in lieu of technology based standards only where technology-based standards are "not feasible." 42 § U.S.C. 7412(h). "Not feasible" is specifically defined as only those situations where (1) "a hazardous air pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State or local law", or (2) "the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations." See, *Sierra Club v. EPA*, 551 F.3d 1019, 1027 (D.C. Cir. 2008).

Aspen has failed to demonstrate that it is "not feasible" to apply technology based standards to its SSM emissions. To the contrary, Aspen has specifically stated that it can comply with its otherwise applicable technology limitations during SSM. Aspen's Air Quality Impact Assessment Report repeatedly states that it did not separately model emissions during SSM because those emissions will not be greater than routine emissions. See, Ap.Ex. 8, p. 3 & 6.

Similarly, the New Source Review requirements of the Clean Air Act permit sources to avoid BACT emission limits only where: (1) the source has demonstrated that it is not technically feasible to comply with such limits during SSM, (2) the permit itself includes design, control, methodological or other changes appropriate for minimizing emissions during SSM period, and (3) the source demonstrates that the SSM emissions allowed under the permit are in compliance with all Clean Air Act requirements, including the NAAQS and increment provisions. See, *In re. RockGen Energy Center*, PSD Appeal No. 99-1 (Aug. 25, 1999), p. 554 (available at <http://www.epa.gov/eab/disk11/rockgen/pdf/>.)

The Environmental Appeals Board specifically remanded RockGen's permit because the permit allowed RockGen to exceed otherwise applicable NSR limits temporarily during startup or shutdown as long as such operations were "carried out in accord with a plan and schedule approved by the Department." *Id.* at 553. The EAB remanded the permit because (1) there was no provision for the startup, shutdown plan to be subject to public notice and review, and (2) the permit condition failed to include details regarding the conditions that would be included in the plan. *Id.* at 553-554. Similarly, Aspen should not be permitted to craft NSR permit conditions, and the necessary associated monitoring, outside of the required public participation process and without an on the record demonstration that: (1) compliance with otherwise applicable NSR emission limits is infeasible and (2) the design, control or methodological requirements in any SSM plan will minimize emissions during SSM to the maximum extent possible and will protect the NAAQS and PSD increments.

BACT Definition

EPA recently proposed actions disapproving much of Texas' current air permitting program. In the proposed disapproval of many provisions of Texas PSD and NSR permitting programs, EPA reaffirmed that the state is currently obligated to apply the federal definition of BACT when issuing major source PSD permits. See, *Approval and Promulgation of Implementation plans: Texas Revisions to the New Source Review (NSR) State Implementation Plan; Prevention of Significant Deterioration (PSD), Nonattainment NSR (NNSR) for the 1997 8-Hour Ozone Standard, NSR Reform, and a Standard Permit*, (EPA-R06-OAR-2006-0133). The document is available on the EPA Region 6 website at http://www.epa.gov/region6/6xa/pdf/texas_nsr_reform_fr_notice.pdf

In pertinent part EPA states that "[t]he currently approved PSD SIP requires that a State include the Federal definition of BACT. See 30 TAC 116.160(a)." *Id.* at pg. 16. "As BACT is a defined term in the Act, See CAA 169(3), we interpret this to mean that a facility may not be constructed unless the permit it has been issued conforms to the Act's definition of BACT" *Id.* at pg. 17.

Pollutant Emission Limits

Protestants submit that emission limits should be specified in Proposal for Decision's Finding of Fact.

NOX

The proposed permit contains BACT emission rates for NOx of 0.15 lb/MMBtu, excluding startup, shutdown, and maintenance emissions. Aspen Power anticipates achieving these limits with a Selective Non-Catalytic Reduction (SNCR) system. Powers prefile pg. 12 lines 28-29 through pg. 13 lines 1-2

Emission rates of at least as low as 0.060 lb/MMBtu NOx are achievable at the Aspen Power boiler if SCR is used. Powers prefile pg. 13 lines 21-22

CO

Based on the use of good combustion practices, Aspen Power proposes a BACT limit for CO of 0.31 lb/MMBtu. Powers prefile pg. 23 lines 6-7

Based on the Russell, Bridgewater and Whitefield examples as constituting BACT, Aspen should use an oxidation catalyst to reduce CO emissions to less than 0.075 lb/MMBtu. Powers prefile pg. 23 lines 18-24

VOC

Based on the use of its ESP, Aspen Power proposed a BACT limit for VOC of 0.017 lb/MMBtu based on the AP-42 emission factor for VOC for biomass units. The TCEQ increased the VOC emission limit to 0.0215 lb/MMBtu in the air permit issued to Aspen Power. Powers prefile pg. 23 lines 13-18.

Aspen Power is readily capable of complying with a 0.01 lb/MMBtu permit limit for VOC. Aspen should therefore use an oxidation catalyst to reduce VOC emissions to less than 0.01 lb/MMBtu. Powers prefile pg. 27 lines 18-21

PM

Aspen's ESP consists of four fields and has an estimated overall efficiency of 98.1 percent. The collection efficiency estimated by the ESP manufacturer on very fine particulate less than 1 micron in diameter is 93 percent. Based on the use of this ESP, Aspen Power proposes a BACT limit for PM of 0.025 lb/MMBtu. Powers prefile pg. 17 lines 21-25. Powers testimony (correcting reference to 3 fields) Tr. p. 264 l. 21-25. Aspen's PM limit includes filterable and condensable particulates. Tr. p. 237 l. 6 through p. 239 l. 14. Because filterable particulates are the controlled particulates, a specific limit for filterable particulates provides a means by which the control system's actual performance can be measured. Power's testimony Tr. p. 431 l. 19 through p. 437 l. 16.

The filterable PM BACT that is appropriate for the Lufkin Generating Plant is 0.012 lb/MMBtu. Powers prefile pg. 22 lines 24-27. ESP PM10 efficiency should be of at least 99.5% to assure the 0.012 lb/MMBtu limit.

Non-mercury metal HAPs

Aspen Power proposes to use particulate matter (PM) as a surrogate for the non-mercury metal HAPS that the facility will emit. The permit limits total PM emissions to 0.025 lb/MMBtu. The permit includes no limit on filterable PM. App. Exh. 6, p.2.

The best-controlled, similar source to Aspen Power is utilizing an ESP with at least a 99.5 percent control efficiency to achieve PM emissions of no greater than 0.012 lb/MMBtu for filterable particulate matter. Pro. Ex. 1, p. 18:6-13, p. 20 Table 1 and p. 21:10-13; Pro. Ex. 5, p. 18; 3 Tr. 426:5-8, 437:11-13.

Organic HAPs:

The Executive Director (ED) proposed to use carbon monoxide (CO) as a surrogate for organic HAP emissions. ED Ex. 1, p. 19: 2-28. The ED determined that undefined "good combustion practices" were the best methods of control for CO. The draft permit includes a CO limit of 0.031 lb/MMBtu. ED Ex. 1, p. 19: 33-34.

The best-controlled, similar source to Aspen Power is using an oxidation catalyst to achieve a CO emissions of less than .075 lb/MMBtu. Pro. Ex. 1, p. 23:12-23; Pro. Ex. 5; 3 Tr. 464:5.

Mercury

Aspen Power's boiler will emit mercury, which is a HAP, but Aspen Power's draft permit includes no emission limit for mercury. Ap. Ex. 5, p. 46. ED. Ex. 8. Thus, Aspen Power's draft permit does not propose the use of an emission control equivalent to MACT for mercury. Protestants submit that an emission limit and proposed control is appropriate for Mercury in this case.

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CERTIFICATE OF SERVICE

On the 14th day of September 2009, the foregoing ANNIE MAE SHELTON AND
ALIGNED PROTESTANTS' RESPONSE TO PROPOSAL FOR DECISION was
provided to the parties listed below via email, fax and/or regular mail


ENRIQUE VALDIVIA

CHIEF CLERKS OFFICE

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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Hon. Judge Sarah Ramos
300 West 15th St, Suite 502
Austin Texas 78701
Fax 512-475-4994

Ms. LaDonna Castanuela
TCEQ Chief Clerk (MC 105)
P.O. box 13087
Austin, Texas 78711-3087
Fax 512-238-3311

Garrett Arthur
Assistant Public Interest Counsel
Texas Commission On Environmental Quality
Office of Public Interest Counsel
P.O. Box 13087, MC-103
Austin, Texas 78711-3087
GARTHUR@tceq.state.tx.us

Office Of Public Interest Counsel

Amy Browning
Texas Commission On Environmental Quality
Litigation Division
P.O. Box 13087, MC-173
Austin, Texas 78711-3087
ABrownin@tceq.state.tx.us

Executive Director

Robert E. "Robin" Morse, III
Attorney At Law
Crain, Caston & James
Five Houston Center
1401 McKinney, 17th Floor
Houston, Texas 77010-4035
rmorse@craincaston.com

Aspen Power

Sylvester McClain
P.O. Box 153635
Lufkin, Texas 75915
Fax: (936) 634-7830

Aligned Protestants

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Respectfully Submitted,

TEXAS RIOGRANDE LEGAL AID

By: 

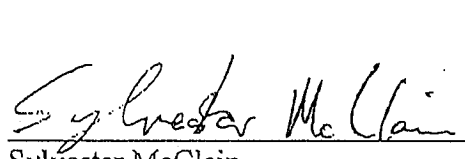
Enrique Valdivia
State Bar No. 20429100
1111 North Main
San Antonio Texas 78212
210-212-3700

ENVIRONMENTAL CLINIC, UNIVERSITY
OF TEXAS SCHOOL OF LAW

By:  10/ permission (22)

Kelly Haragan
State Bar No. 00793897
727 E. Dean Keeton
Austin, Texas 78705
512-587-9318

ATTORNEYS FOR PROTESTANT
ANNIE MAE SHELTON

 10/ permission (22)

Sylvester McClain
P.O. Box 153635
Lufkin, Texas 75915

REPRESENTATIVE FOR
ALIGNED PROTESTANTS

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